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## Decision

**Matter of:** FujiFilm Medical Systems USA, Inc.

**File:** B-400733.9; B-400733.10; B-400733.12

**Date:** December 1, 2009

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Kenneth Kilgour, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest that awardee's proposal failed to meet a material requirement of the solicitation is denied where the record shows that the agency reasonably concluded that the awardee's proposal met the solicitation requirement.
  2. Protest that agency employed an unstated criterion in evaluating protester's experience is denied where the weaknesses identified in the agency's evaluation concerned whether the protester had specific experience directly related to the work to be performed under the solicitation, an issue agency reasonably may consider in evaluating an offeror's experience, even if such experience is not explicitly called for in the solicitation.
  3. Protest that the agency improperly evaluated the protester's proposal under the past performance factor is denied where, on the record, there is no basis on which to question the reasonableness of the agency's evaluation.
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### DECISION

FujiFilm Medical Systems USA, Inc., of Stamford, Connecticut, protests the award of a contract to AGFA HealthCare Corporation, of Greenville, South Carolina, by the Department of Veterans Affairs (VA) under request for proposals (RFP)

No. VA-260-08-RP-0167 for picture archiving and communication system (PACS) services for Veterans Integrated Service Network 20 (VISN 20).<sup>1</sup> The protester alleges that the awardee’s proposal failed to meet two material requirements of the RFP, that the agency utilized an unstated evaluation criterion in its evaluation, and that the agency improperly evaluated the protester’s proposal under the past performance factor.

We deny the protest.

“PACS” is a term used to describe a set of systems that facilitate the archiving, processing, and reviewing of digital radiological images and their related information. The images are acquired, archived, and retrieved over a network for diagnosis and review by physicians. The images can be interpreted and viewed at workstations, which can also serve as archive stations for image storage.<sup>2</sup> VISN 20 includes nine main locations and other smaller clinics, and the VISN 20 PACS would link those facilities and allow for the efficient sharing of radiological images.

The agency evaluated the proposals received from FujiFilm, AGFA, and Philips, the three offerors whose proposals were deemed eligible for award; the chart below lists the evaluation factors and subfactors in descending order of importance, along with the ratings that the agency assigned to each of the three proposals.

Factor or subfactor	RATINGS		
	FujiFilm	AGFA	Philips
<b>EXPERIENCE</b>			
Installation	Exceptional	Exceptional	Exceptional
Study Migration	Exceptional	Exceptional	Exceptional
Operation	Acceptable	Exceptional	Exceptional
<b>TECHNICAL ABILITY/ MANAGEMENT APPROACH</b>			
Storage	Acceptable	Acceptable	Acceptable
VistA Interface	Acceptable	Acceptable	Acceptable
Migration	Acceptable	Exceptional	Acceptable
Unique Identifier	Acceptable	Acceptable	Acceptable
Disaster Recovery	Acceptable	Acceptable	Acceptable
Image Display	Acceptable	Acceptable	Exceptional
<b>PAST PERFORMANCE</b>	Satisfactory	High	Satisfactory

<sup>1</sup> AGFA protested the prior award to Philips Healthcare Informatics. We dismissed that protest as academic when the agency decided to cancel the award and reevaluate the proposals received. See AGFA HealthCare Corp., B-400733.2 et al., Jan. 9, 2009.

<sup>2</sup> See <http://www.biohealthmatics.com/technologies/his/pacs.aspx>.

<b>FIRM FIXED PRICE</b>	\$8,159,536	\$9,178,328	\$9,234,650
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Exceptional, or blue, was defined as “[e]xceeds specified technical requirements delineated below in a way beneficial to the government; Offeror must have one or more strengths and no deficiencies to receive a blue.” RFP Amendment 6 at 7. Acceptable, or green, was defined as “[m]eets specified minimum technical requirements delineated below; Proposal rated green must have no deficiencies but may have one or more strengths.” Id.

The agency awarded the contract to AGFA, whose proposal was the lower-priced of the two most highly technically rated. This protest followed.

The protester argues that the awardee’s proposal failed to demonstrate a commitment to store a minimum of 12 months of recently viewed studies at each site, a technical requirement of the RFP. Id. The protester points to language in a chart in the awardee’s proposal that, it alleges, indicated that the awardee’s system would store only 6 months of studies; the awardee disputes that interpretation of the chart.

The disputed language comes from a box in one corner of the chart—figure 2 of the awardee’s proposal—labeled “[DELETED],”<sup>3</sup> this one to be located at the Portland, Oregon VA medical center. Figure 2 states: “[DELETED]” AR, Tab 5 at 72, Awardee’s Proposal at 4. The protester points to the last quoted phrase to argue that the awardee’s proposal stops short of meeting the RFP’s technical requirement for 12 months of data storage. The awardee argues that the protester has taken one part of one figure out of context to misconstrue what AGFA has proposed. AGFA asserts that the chart in question is no more than what it purports to be, namely, a schematic rendering of a “[DELETED] IMPAX System” after [DELETED] years of operation. Similarly, the agency claims that, based on repeated assertions<sup>4</sup> in the text of the awardee’s proposal that AGFA would meet the 12-month storage requirement, it reasonably evaluated the awardee’s proposal as “acceptable” under this subfactor. We agree. In our view, the record shows that, read in context, the fine print on figure 2 of the awardee’s proposal, which appears to be intended as an illustration of the “[DELETED]” IMPAX System, does not contradict the multiple, affirmative statements in the awardee’s proposal that the awardee’s system, in the course of contract performance, would store the data for the required 12 months.

<sup>3</sup> According to AGFA, an IMPAX system is a web-deployable image and information management solution designed to help streamline enterprise workflow and deliver increased efficiency and productivity to medical facilities. See [http://www.agfa.com/en/he/products\\_services/all\\_products/impax\\_60.jsp](http://www.agfa.com/en/he/products_services/all_products/impax_60.jsp).

<sup>4</sup> The intervenor identified [DELETED] passages in its proposal where it unequivocally offered 12 months of storage. See Intervenor’s Comments, Nov. 6, 2009, at 6.

The protester also argues that the awardee's proposal failed to demonstrate ad-hoc or in-mass disaster recovery, for one or several sites, completed within 96 hours--another requirement of the RFP. RFP Amendment 6 at 8. The protester points to the agency's evaluation of the awardee's proposal under the technical ability/management approach factor, disaster recovery subfactor, which stated: "WEAKNESSES IN THIS AREA: No specific discussion of an in-mass data recovery to a local cache. Proposal implies studies can be easily retrieved to cache but only mention is of an ad hoc process for individual studies." Agency Report (AR), Tab 7, Evaluation Records at 11. Because the RFP required offerors to demonstrate either ad-hoc or in-mass data recovery, RFP Amendment 6 at 8, and the awardee's proposal demonstrated the former, AR, Tab 5 at 87-88, AGFA's Proposal at 17-18, the protester's allegation that the awardee's proposal fails to show compliance with the RFP requirement is not supported by the record. Accordingly, in as much as the awardee's proposal met the technical requirements of the RFP, we see nothing unreasonable in the agency's evaluation of the awardee's proposal as acceptable under this subfactor.

The protester asserts that the agency employed an unstated evaluation criterion when it downgraded the protester's proposal under the experience factor, operation subfactor, which required vendors to have operated a PACS similar in scope and complexity to that proposed for a minimum of 1 year. RFP Amendment 6 at 7. The protester alleges that its proposal was improperly downgraded because it lacked VA-specific experience, which had not been identified as an evaluation criterion in the RFP. The record shows that the agency determined that the protester's proposal met the RFP requirement under the experience factor, operation subfactor, and thus evaluated it as acceptable under that subfactor. After noting certain strengths in the protester's proposal, the agency's evaluation under this subfactor stated:

**WEAKNESSES IN THIS AREA:**

Evidence of a single-site VA implementation from the resources provided.  
Routing to VA environments (VistA) could not be effectively noted.  
[Health-Level 7<sup>5</sup>] configurations from VistA could not be effectively noted.

AR, Tab 6, Evaluation Documents at 3. The identification of these weaknesses, the protester asserts, indicates the application of an unstated evaluation criterion--

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<sup>5</sup> Health-Level 7 is a "standards developing organization dedicated to providing a comprehensive framework and related standards for the exchange, integration, sharing, and retrieval of electronic health information that supports clinical practice and the management, delivery and evaluation of health services."  
<http://www.hl7.org/about/index.cfm>.

experience with the VA—which resulted in a lower rating (“acceptable”) than its proposal should have received under this subfactor.

In evaluating proposals, an agency properly may take into account specific matters that are logically encompassed by, or related to, the stated evaluation criteria, even when they are not expressly identified as evaluation criteria. MINACT, Inc., B-400951, Mar. 27, 2009, 2009 CPD ¶ 76 at 3. See also Burchick Constr. Co., B-400342.2, Apr. 20, 2009, 2009 CPD ¶ 102 at 5, n.4 (noting that “an agency, under generally worded experience/past performance criteria, properly may consider the extent to which an offeror has experience directly related to the work required by the solicitation.”). Moreover, it is always reasonable for an agency to consider whether an offeror has specific experience directly related to the work to be performed under the solicitation, even if such experience is not explicitly called for in the solicitation.<sup>6</sup> MINACT, Inc., *supra*; MELE Assocs., Inc., B-299229.4, July 25, 2007, 2007 CPD ¶ 140 at 7. That is what the agency did here. Because, under the terms of the solicitation, “acceptable” was an appropriate rating for proposals that met the minimum requirements of the RFP, and the agency reasonably found that the protester’s proposal met (but did not exceed) the minimum requirements of the RFP in this area, we see no basis to object to the agency’s evaluation of the awardee’s proposal under this subfactor.<sup>7</sup>

Finally, the protester challenges the agency’s evaluation of its proposal under the past performance factor, claiming that its proposal warranted a rating of high confidence, rather than the one that it received, satisfactory confidence.<sup>8</sup> We will review an agency’s past performance evaluation to ensure that it was reasonable and consistent with the solicitation’s evaluation criteria and procurement statutes and

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<sup>6</sup> Alternatively, the protester argues that the Department of Defense PACS and the VA PACS differ in name only, and thus the assessment of the weaknesses noted above was unreasonable, given the protester’s experience with Department of Defense PACS. The record does not support the assertion that the two agencies’ PACS differ only in name. See, e.g., Intervenor’s Comments on AR, Nov. 6, 2009, Exh.

<sup>7</sup> The protester also asserts that, because the agency evaluated its proposal as excellent under the experience factor, migration subfactor, it was unreasonable for the agency to evaluate its proposal as acceptable, rather than exceptional, under the experience factor, operation subfactor, given that the two subfactors were “inextricably intertwined.” Comments on the AR, Oct. 5, 2009, at 7. These subfactors were separate criteria, separately evaluated, and we see no merit to this argument.

<sup>8</sup> High confidence was defined as “high confidence the offeror will successfully perform the required effort,” and satisfactory confidence was defined as “confidence that the offeror will perform the required effort. Normal contractor emphasis should preclude any problems.” RFP at 25.

regulations. The MIL Corp., B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 10; Hanley Indus., Inc., B-295318, Feb. 2, 2005, 2005 CPD ¶ 20 at 4. A protester's mere disagreement with the agency's judgment is not sufficient to establish that the agency's evaluation was unreasonable. Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

The RFP required proposals to contain a minimum of two examples of successfully completed, interconnected, multi-site installations. RFP at 21. The protester's proposal included three past performance references. AR, Tab 4 at 51-55, Protester's Proposal at 41-45. Based on the references provided, the agency's past performance evaluation record for the protester's proposal reflects one "urgent safety notification" and two weaknesses under prior contracts. The urgent safety notification stated that "[w]hen scrolling through the images of series, the scrolling appears choppy, hesitates, and jumps ahead and is not smooth." AR, Tab 6, Evaluation Documents at 12. The two weaknesses noted were "IBM architecture problems on the server hardware problems" and that "[r]eference recommended us to 'Stay away from the IBM architecture.'" Id. at 13. The agency's evaluation also noted several strengths in the past performance portion of the protester's proposal.

The proposal was evaluated as "satisfactory confidence" under past performance, which was the third highest of the six possible ratings. Given the weaknesses that the agency identified in the protester's past performance, we see nothing unreasonable in the agency's evaluation of the protester's proposal as "satisfactory confidence" under past performance.

The protest is denied.<sup>9</sup>

Lynn H. Gibson  
Acting General Counsel

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<sup>9</sup> The protester also alleged that its proposal offered certain benefits to the agency, and as a result its proposal should have been evaluated as exceptional under certain subfactors that were instead evaluated as acceptable. Supplemental Protest, Aug. 31, 2009, at 4-12. We have reviewed each of these allegations and, in every instance, find the agency's evaluation reasonable.